

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE PROPER
PROCEDURES AND PROCESS FOR THE
COMMISSION'S OPERATIONS AND
PROCEEDINGS DURING THE DECLARED
STATE OF EMERGENCY AND RELATED
MATTERS.

CASE No. 20-591-AU-UNC

IN THE MATTER OF THE JOINT
APPLICATION OF RELIANT ENERGY
NORTHEAST, LLC AND GREEN
MOUNTAIN ENERGY COMPANY FOR A
WAIVER OF THE COMMISSION'S
CURRENT SUSPENSION OF IN-STORE
MARKETING TO CUSTOMERS IN OHIO.

CASE No. 20-1008-GE-WVR

IN THE MATTER OF THE JOINT
APPLICATION OF THE RETAIL ENERGY
SUPPLY ASSOCIATION AND CERTAIN
COMPETITIVE RETAIL SUPPLIERS FOR
WAIVER OF THE CURRENT SUSPENSION
OF IN-PERSON MARKETING TO
CUSTOMERS IN OHIO.

CASE No. 20-1040-GE-UNC

ENTRY

Entered in the Journal on June 3, 2020

I. SUMMARY

{¶ 1} In light of the May 20, 2020 Order by the Director of the Ohio Department of Health to responsibly rescind requirements of the Stay Safe Ohio Order, the Commission modifies its March 17, 2020 directive. Beginning immediately, all competitive retail electric service providers and competitive retail natural gas service suppliers may resume in-store marketing activities. Suppliers may also resume meetings with commercial and industrial customers by appointment, pursuant to the directives set forth below.

II. DISCUSSION

A. *Procedural History*

{¶ 2} R.C. 4928.08 states that no electric services company shall provide a competitive retail electric service (CRES) to a consumer in this state without first being certified by the Commission. R.C. 4928.16(A) states that the Commission has jurisdiction under R.C. 4905.26, upon initiative of the Commission, regarding the provision by an electric services company or governmental aggregator subject to certification under R.C. 4928.08 of any service for which it is subject to certification. Similarly, R.C. 4929.20 states that no retail natural gas supplier shall provide a competitive retail natural gas service (CRNGS) to a consumer without first being certified by the Commission. R.C. 4929.24 states that the Commission has jurisdiction under R.C. 4905.26, upon initiative of the Commission, regarding the provision by a retail natural gas supplier subject to certification under R.C. 4929.20 of any service for which it is subject to certification.

{¶ 3} R.C. 4928.02 states that it is the policy of this state to ensure retail electric service consumers protection against unreasonable sales practices and to protect at-risk populations. R.C. 4928.02(I) and (L). Ohio Adm.Code 4901:1-21-02(B) states that after notice and, if necessary, an opportunity for hearing, the Commission, upon its own motion, may require CRES providers to take any appropriate action necessary to comply with the state's policy as stated in R.C. 4928.02. Similarly, Ohio Adm.Code 4901:1-29-02 states that after notice and, if necessary, an opportunity for hearing, the Commission, upon its own motion, may require CRNGS suppliers to take any appropriate action necessary to comply with the state's policy as stated in R.C. 4929.02.

{¶ 4} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19.

Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 5} Pursuant to R.C. 3701.13, the Ohio Director of the Department of Health has the authority to issue orders and has supervisory authority over “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the Department of Health issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 6} On March 12, 2020, the Commission opened Case No. 20-591-AU-UNC and directed all utility companies in this state to review their disconnection procedures in light of the state of emergency. *In re the Proper Procedures and Process for the Commission’s Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC (*Emergency Case*), Entry (Mar. 12, 2020) at ¶ 7. On March 13, 2020, the Commission directed all public utilities in this state to review their reconnection procedures and extended the winter reconnection order through May 1, 2020.

{¶ 7} Further, on March 17, 2020, through the *Emergency Case*, the Commission determined that marketing practices involving in-person contact like door-to-door and in-store marketing by CRES and CRNGS suppliers present unnecessary risks of spreading COVID-19 to all individuals, particularly with respect to at-risk populations in Ohio, and that these practices were in conflict with the governor’s Executive Order, the March 12, 2020 Order of the Director of the Ohio Department of Health, and the policy of this state. Accordingly, the Commission directed CRES providers and CRNGS suppliers to immediately suspend, for all customer classes, all door-to-door and in-store marketing to customers as well as any other sales or solicitation practice that involves in-person contact

in this state for the duration of the emergency, unless otherwise ordered by the Commission. *Emergency Case*, Entry (March 17, 2020) at ¶ 7.

{¶ 8} On April 30, 2020, the Director of the Ohio Department of Health issued an Order to reopen certain businesses, subject to social distancing and other workplace safety requirements and sector specific provisions, including provisions for the consumer, retail, and services sector.

{¶ 9} On May 20, 2020, the Director of the Ohio Department of Health issued an Order to responsibly rescind requirements of the Stay Safe Ohio Order and lift the mandatory requirements and restrictions that were needed during the initial phase of the COVID-19 pandemic. On May 29, 2020, the Director of the Ohio Department of Health issued a revised Stay Safe Ohio Order that further lifts restrictions previously issued.

B. Submitted Applications from CRES and CRNGS Providers

{¶ 10} Reliant Energy Northeast, LLC and Green Mountain Energy Company (collectively, NRG) are certified by the Commission to provide CRES and CRNGS in Ohio pursuant to R.C. 4928.08 and R.C. 4929.20, and are thereby subject to the Commission's jurisdiction pursuant to R.C. 4928.16 and R.C. 4929.24.

{¶ 11} On May 8, 2020, NRG filed a joint application for waiver and request for expedited ruling in Case No. 20-1008-GE-WVR. In the application, NRG requests that the Commission waive a portion of the suspension it issued on March 17, 2020, in the *Emergency Case*, and allow in-store marketing of competitive retail energy services to customers in Ohio by no later than May 12, 2020. NRG explains that, in light of the Director of the Ohio Department of Health's April 30, 2020 Order, it is in discussion with its retail partners to return to their stores and market CRES and CRNGS to customers visiting those retail establishments. With the retail businesses reopening, NRG seeks to have the same ability as any retailer in Ohio to restart its own marketing within the premises of those businesses.

{¶ 12} AEP Energy, Inc., Direct Energy Business, LLC, Direct Energy Services, LLC, Energy Harbor LLC, Energy Professionals of Ohio, Interstate Gas Supply, Inc., and Vistra Energy Corp. are also certified by the Commission to provide CRES and/or CRNGS in Ohio pursuant to R.C. 4928.08 and R.C. 4929.20, and are thereby subject to the Commission's jurisdiction pursuant to R.C. 4928.16 and R.C. 4929.24. The Retail Energy Supply Association is a national group of CRES and CRNGS suppliers.

{¶ 13} On May 14, 2020, Retail Energy Supply Association, AEP Energy, Inc., Direct Energy Business, LLC, Direct Energy Services, LLC, Energy Harbor LLC, Energy Professionals of Ohio, Interstate Gas Supply, Inc., and Vistra Energy Corp. (collectively, Joint Applicants) filed a joint application in Case No. 20-1040-GE-UNC. Based on the most up-to-date guidance provided by the governor and the Director of the Ohio Department of Health, Joint Applicants request modifications to the in-person marketing restrictions imposed by the Commission through the *Emergency Case* on March 17, 2020. The Joint Applicants' primary recommendation is to remove the March 17, 2020 prohibition on direct marketing. In addition, Joint Applicants also provide recommendations regarding tabletop marketing, appointment-based in-person sales, and door-to-door sales, which they maintain will allow for safe, sanitary, reduced touch, and touchless interactions while restarting the retail energy economy. In sum, the Joint Applicants request the Commission to allow the recommencement of all in-person and door-to-door solicitations as soon as reasonably possible.

{¶ 14} By Entry dated May 19, 2020, the attorney examiner directed interested persons to file motions for intervention and comments by May 26, 2020, to assist the Commission in its review of the Joint Applicants' application. Staff filed comments on May 26, 2020. In its comments, Staff recommends that, if the Commission decides to allow CRES and CRNGS providers to resume in-person marketing and solicitation, it should require the providers to comply with all applicable guidelines issued by the Ohio Department of Health and the governor, including the April 30, 2020 Stay Safe Ohio Order, as amended by a subsequent May 20, 2020 Order, and the governor's Responsible RestartOhio protocols.

Further, Staff recommends that CRES and CRNGS providers be required to comply with all Commission rules and orders regarding marketing, soliciting, and enrolling customers, including the requirements contained in Ohio Adm.Code Chapters 4901:1-21 and 4901:1-29. Finally, in order to ensure compliance with the Stay Safe Order and Commission Orders, CRES and CRNGS providers should monitor their in-person employees and agents to ensure that all state protocols and Commission orders are met. Staff recommends that the providers' compliance plans be available upon request. In the event Joint Applicants are unable to comply with the Stay Safe Order and the Responsible RestartOhio protocols while continuing to abide by the Commission's rules, then Staff believes any waiver of the Commission's rules should be handled on a case-by-case basis.

{¶ 15} The Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene and comments on May 26, 2020. No memorandum contra was filed. Upon review of OCC's motion to intervene, the Commission finds that it is reasonable and should be granted.

{¶ 16} As part of its comments, OCC puts forth two main points. First, OCC argues that the Joint Applicants' waiver request should be denied because the health crisis continues to adversely impact Ohioans and allowing in-person marketing is not conducive to subduing the crisis. Further, OCC contends that, under the Commission's rules, personal direct contact with customers cannot be avoided during direct solicitation and marketing, including the exchange of written materials such as marketing information, sales contracts, pens and other instruments to sign contracts, and third-party verification forms. Direct solicitations can also involve customers' interacting with a marketer's electronic media such as kiosks at malls, laptops, keyboards, and cellular phones. OCC claims that all these actions involve the risk of exposing both customers and marketing personnel to COVID-19.

{¶ 17} OCC notes there is no practical method for health officials or the Commission to physically verify, at customer homes, front porches, malls, or grocery stores where sales agents are present, that public health is not being placed at risk. OCC contends that, unlike other retail establishments, marketers like the Joint Applicants have many other ways to

reach consumers that do not require face-to-face contact, including mail, public broadcast, and telemarketing. Second, OCC argues that the financial fallout from the pandemic has been very difficult for many Ohioans and a substantial majority of CRNGS offers available are higher than a standard choice natural gas offer. Because many Ohioans are experiencing financial harm due to the pandemic through layoffs and furloughs, OCC asserts that marketing for competitive energy services is not current necessary.

C. Commission Conclusion

{¶ 18} In light of the May 20, 2020 and May 29, 2020 Orders by the Director of the Ohio Department of Health to lift mandatory requirements and restrictions, the Commission modifies its directive to all CRES providers and all CRNGS suppliers to suspend in-person marketing activities. Specifically, the Commission finds that in-store marketing activities may be resumed as soon as reasonably possible provided they are: (1) in accordance with arrangements between the CRES and CRNGS provider and the store; (2) any such resumed activities are proactively compliant with relevant requirements and best practices issued by the Ohio Department of Health, as well as any guidance or order from any relevant local health authority; and (3) in accordance with all Commission rules and statutory mandates applicable to CRES and CRNGS providers. Further, the Commission clarifies that CRES and CRNGS providers may also resume scheduling in-person appointments for non-residential customers. In the event that any CRES or CRNGS provider receives, from a state or local enforcement authority, a warning or more formal citation for failure to comply with such requirements and best practices, the CRES or CRNGS provider shall immediately forward the warning or citation to the Commission's Service Monitoring and Enforcement Department. The Commission continues to evaluate when door-to-door solicitation of CRES and CRNGS will resume. This issue will be addressed through subsequent entry. Based on our directives identified above, we grant NRG's application for waiver and grant, in part, and deny, in part, the Joint Applicants' application.

III. ORDER

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That the Commission's March 17, 2020 directive to all CRES providers and all CRNGS suppliers to suspend in-store marketing activities be modified, as set forth in Paragraph 18. It is, further,

{¶ 21} ORDERED, That NRG's application for waiver be granted and Joint Applicants' application be granted, in part, and denied, in part, as set forth in Paragraph 18. It is, further,

{¶ 22} ORDERED, That notice of this Entry be served via the Electric-Energy and Gas-Pipeline industry service lists and upon all parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

AS/mef

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/3/2020 2:48:54 PM

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Case No(s). 20-0591-AU-UNC, 20-1008-GE-WVR, 20-1040-GE-UNC

Summary: Entry ordering that beginning immediately, all competitive retail electric service providers and competitive retail natural gas service suppliers may resume in-store marketing activities. Suppliers may also resume meetings with commercial and industrial customers by appointment, pursuant to the directives set forth below electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio